



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422, 423, 438, and 498

[CMS-4185-RCN2]

RIN 0938-AT59

Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021; Extension of Timeline to Finalize a Rulemaking

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Extension of timeline for publication of final rule.

SUMMARY: The Social Security Act (the Act) requires us to publish a Medicare final rule no later than 3 years after the publication date of the proposed rule. This document announces an additional 3 month extension of the timeline for publication of a Medicare final rule in accordance with the Act, which allows us to extend the timeline for publication of the “Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021” final rule under exceptional circumstances.

DATES: As of October 28, 2022, the timeline for publication of a rule to finalize the November 1, 2018 proposed rule (83 FR 54982) is extended until February 1, 2023.

FOR FURTHER INFORMATION CONTACT: Joseph Strazzire, (410) 786-2775.

SUPPLEMENTARY INFORMATION: On November 1, 2018 (83 FR 54982), we published a proposed rule, “Medicare and Medicaid Programs; Policy and Technical

Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021,” that would revise the Medicare Advantage (MA) Risk Adjustment Data Validation (RADV) regulations to improve program efficiency and payment accuracy. The proposed rule discussed the Secretary’s authority to: (1) extrapolate in the recovery of RADV overpayments, starting with payment year 2011 contract-level audits; and (2) not apply a fee-for-service (FFS) adjuster to the RADV overpayment determinations.

Section 1871(a)(3)(A) of the Act requires the Secretary to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. In accordance with section 1871(a)(3)(B) of the Act, the timeline may vary among different regulations based on differences in the complexity of the regulation, the number and scope of comments received, and other relevant factors, but may not be longer than 3 years except under exceptional circumstances. In addition, in accordance with section 1871(a)(3)(B) of the Act, the Secretary may extend the initial targeted publication date of the final regulation if the Secretary, no later than the regulation's previously established proposed publication date, publishes a notice with the new target date for publication, and such notice includes a brief explanation of the justification for the variation.

On October 21, 2021 (86 FR 58245), we published a notice of a 1-year extension of the timeline for publication of a rule to finalize the November 1, 2018, proposed rule (83 FR 54982) until November 1, 2022. However, we are unable to meet this November 1, 2022, timeline for publication of the previously referenced RADV-audit related provisions because of ongoing exceptional circumstances. As described in the October 21, 2021 notice of extension of the timeline, we provided several extensions of the comment period and we received extensive public comments on the proposed rule

and subsequent FFS Adjuster study and related data. We continue to have ongoing delays resulting from the agency's focus on the COVID-19 public health emergency, and we have determined that additional time continues to be needed to address the complex policy and operational issues that were raised.

This document extends the timeline for publication of the final rule for an additional 3 months, until February 1, 2023.

Elizabeth J. Gramling,

Executive Secretary to the Department,

Department of Health and Human Services.

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